BORA LASKIN LAW LIBRARY
3 1761 04866 9485

COMPARATIVE CONSTITUTIONAL LAW

VOLUME I

Professor David Beatty

University of Toronto
Faculty of Law

January 1998

BORA LASKIN LAW LIBRARY
SEP 17 1999
FACULTY OF LAW
UNIVERSITY OF TORONTO

UNIVERSITY OF TORONTO

COMPARATIVE CONSTITUTIONAL LAW

VOLUME I

Professor David Beatty

University of Toronto
Faculty of Law

January 1998

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/comparativeconst01beat_0

Contents

I INTRODUCTION

D.P. Kommers, "The Value of Comparative Constitutional Law", 9 John Marshall Journal of Practice and Procedure, 685, p. 691-4 . . . . . I-1

M. Cappelletti, The Judicial Process in Perspective, Chapt. 3 . . . . . I-4

D.M. Beatty, "Law and Politics" (1996) 44 Am.J. Comp. Law 131 . . . . . I-12

II RELIGION and CONSCIENCE

Lee v. Weisman, 112 S.Ct. 2649 (1992) II-1

Employment Division, Dept. of Human Resources of Oregon v. Smith, 110 S.Ct. 1595 (1990) II-13

Edwards Books and Art v. Queen (1986) 35 D.L.R. (4th) 1 . . . . . II-20

B.(R.) v. Childrens Aid Society of Metro Toronto (1995) 122 D.L.R. 4th 111-32 . . . .

Bijoe Emmanuel v. The State of Kerala A.I.R. 1987 S.C. 748 . . . . . II-43

Saifuddin v. State of Bombay A.I.R. 1962 S.C. 853 . . . . . II-47

The Faith Healing Case (Nishida v. Japan), Itoh and Beer, The Constitutional Case Law of Japan: Selected Supreme Court Decisions 1961-70 Univ. of Washington Press (1978) p. 223-226 . . . . . II-54

The Shinto Ground-breaking Ceremony Case, 1977, Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . II-56

Kjeldsen, Busk Madsen and Pedersen v. Denmark, Series A, Volume 23, 7 Dec. 1976 . . . . . II-62

Kokkinakis v. Greece (1993) 17 E.H.R.R. 397 . . . . . II-67

Blood Transfusion Case (1971) in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press 32 BVerfGE 98 . . . . . II-78

School Prayer Case (1979) in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press 52 BVerfGE 223 . . . . . II-81

III ASSOCIATION

A. POLITICAL ASSOCIATION

The United States Civil Service Commission v. The National Association of Letter Carriers 413 U.S. 548, 93 S.Ct. 2880 (1973) III-1

Osborne v. Canada (Treasury Board) 82 D.L.R. 4th, 321 (1991) III-10

Kameshwar Prasad v. State of Bihar A.I.R. 1962 S.C. 1166 . . . . . III-17

Balakotaiah v. The Union of India A.I.R. 1958 S.C. 232 . . . . . III-22

The Sarufutsu Public Employee Case (1974), Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . . . III-24

Kosiek v. Germany (1986) 9 EHRR 328 . . . . . III-34

The Civil Servant Loyalty Case in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press p. 323; (1975 39 BVerfGE 334 . . . . . III-39

B. ECONOMIC ASSOCIATION

Abood v. Detroit Board of Education 431 U.S. 207 (1977) III-42

Lavigne v. Ontario Public Service Employees Union, 81 D.L.R. (4th) 545 (1991) III-51

Professional Institute of Public Service of Canada v. Commissioner of the Northwest Territories, 72 D.L.R. (4th) 1 (1990) III-64

Damyanti v. Union of India, A.I.R. 1971 S.C. 966 . . . . . III-67

All India Bank Employees v. National Industrial Tribunal, A.I.R. 1962 S.C. 171 . . . . . III-70

The Zennorin Public Employee Case (1973), Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . . . III-77

Young, James and Webster v. The United Kingdom, 1981 4 E.H.R.R. 38 . . . . . III-87

National Union of Belgian Police v. Belgium, (1975) 1 E.H.R.R. 578 . . . . . III-95

The Codetermination Case, in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press p. 278, (1979) 50 BVerfGE 290 . . . . . III-99

The Worker's Chamber Case, [1978] 1 I.L.L.R. 27-33; (1974) BVerfGE 281 . . . . . III-103

IV EXPRESSION

A. HARMFUL EXPRESSION

R.A.V. v. City of Paul, 112 S.Ct. 2538 (1992) IV-1

R. v. Butler, (1992) 89 D.L.R. (4th) 449 . . . . . IV-18

R. Rajagopal v. State of T.N. A.I.R. 1995 S.C. 264 . . . . . IV-26

The Customs Office Censorship Case (1984), Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . . . IV-29

Handyside v. The United Kingdom (Note), European Court of Human Rights, Ser. A., Vol. 24, Dec. 7, 1976 . . . . . IV-36

Muller v. Switzerland, (1991) 13 E.H.R.R. 212 . . . . . IV-39

The Mephisto Case, in: The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press IV-45

B. COMMERCIAL EXPRESSION

S.U.N.Y. v. Fox 109 S.Ct. 3028 (1989) IV-53

RJR-MacDonald Inc. v. Attorney-General of Canada (1995) 127 D.L.R. (4th) 1 IV-58

TATA Press Ltd. v. Mahanagar Telephone Nigam Ltd. A.I.R. 1995 S.C. 2439 . IV-81

Ono v. Japan (The Moxa Advertising Case), in The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961-70, eds. Itoh and Beer, p. 217 (1978) IV-84

Markt Intern and Beerman v. Germany (1990) 12 E.H.R.R. 161 . . . . . IV-88

The Press Advertising Case 21 BVerfGE 271 (1967) IV-95

C. ACCESS RESTRICTIONS ON MEANS OF EXPRESSION

Society for Krishna Consciousness v Lee 112 S.Ct. (1992) IV-101

Committee for the Commonwealth of Canada v. Canada 77 D.L.R. (4th) 385 . . . . . IV-115

Life Insurance Corporation of India v. Manubhai D. Shah A.I.R. 1993 S.C. 171 IV-134

Tokyo Ordinance Decision, 14 Keishu 1243 in Court and Constitution of Japan: Selected Supreme Court Decisions, 1948-60 Maki, John M., (1964) Univ. Washington Press p. 84-166 . . . . . IV-138

Platform Arzte fur das Leben v. Austria 13 EHRR 204 (1988) IV-146

First Television Case (1961) in The Constitutional Jurisprudence of the F.R.G., D.P. Kommers, Duke Univ. Press IV-149

3rd Television Case in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press 57 BVerfGE 295 (1981) IV-153

V LIFE, LIBERTY AND SECURITY OF THE PERSON:

Roe v. Wade 93 S.Ct, 705 (1973) 410 U.S. 113 . . . . . V-1

Morgentaler, Smoling and Scott v. The Queen 44 D.L.R. (4th) 385 . . . . . V-16

Death Penalty Case Hanreishu, II, No. 3, 1991 (Criminal) in J.M. Maki (ed.) Court and Constitution in Japan V-52

Mithu v. State of Punjab AIR 1983 Supreme Court 473 . . . . . V-56

Open Door Counselling and Dublin Well Woman v. Ireland 15 E.H.R.R. 244 (1992) V-63

West German Abortion Decision Feb 25/75 39 BVerfGE 1 reported in (1976) 9 John Marshall Journal of Practice and Procedure 605 . . . . . V-76

VI EQUALITY

Roy Romer et al v. Richard G. Evans et al (1996) 64 L.W. 4353 . . . . . VI-1

Michael M. v. Superior Court of Sonoma County, 450 U.S. 464 (1981) VI-8

Egan v. Canada, 124 D.L.R. (4th) 609 (1995) VI-13

R. v. Hess; R. v. Nguyen, [1990] 6 W.W.R. 289 . . . . . VI-40

Deepak Sibal v. Punjab University, A.I.R. 1989 S.C. 903 . . . . . VI-52

Atam Prakash v. State of Haryana, A.I.R. 1986 S.C. 859 . . . . . VI-58

The Patricide Case in Murphy, Walter F., and Tannenhaus, Joseph, Comparative Constitutional Law Cases and Commentaries, St. Martin's Press, (1977), p. 359 . . . . . VI-64

The Nissan Gender Discrimination Case (1981), Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . . . VI-70

Abdulaziz, Cabales and Balkandali v. United Kingdom, (1984) 7 E.H.R.R. 471 . . . . . VI-71

Dudgeon v. United Kingdom, (1981) 4 E.H.R.R. 149 . . . . . VI-79

Nocturnal Employment Case 85 BVerfGE 191 (1992) VI-89

The Homosexuality Case, in Murphy, Walter F., and Tannenhaus, Joseph, Comparative Constitutional Law Cases and Commentaries, St. Martin's Press, (1977) p. 351 . . . . . VI-94

VII VOTING RIGHTS

Reynolds v. Sims, 377 U.S. 533 (1964) VII-1

Re Reference: Electoral Boundaries Commission Act (1991) 81 D.L.R. (4th) 16 . . . . . VII-10

The 1985 House of Representatives Malapportionment Case, Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . . . VII-21

R.C. Poudyal v. Union of India A.I.R. 1993 S.C. 184 . . . . . VII-27

Mathieu-Mohin and Clerfayt v. Belgium, (1988) 10 E.H.R.R. 1 . . . . . VII-35

Apportionment Case II, in: The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press, p. 192 (1963 BVerfGE 130) VII-44

VIII SOCIAL AND ECONOMIC RIGHTS

A. RIGHT TO AN EDUCATION

Meyer v. Nebraska, 262 U.S. 390 . . . . . VIII-1

Bartels v. State of Iowa, 262 U.S. 404 . . . . . VIII-3a

Wisconsin v. Yoder, 406 U.S. 205 . . . . . VIII-4

Mahe v. Alberta, 68 D.L.R. (4th) 69 . . . . . VIII-12

Re Kerala Education Bill, A.I.R. 1958 S.C. 956 . . . . . VIII-23

Textbook Fee Case, in Itoh and Beer, The Constitutional Case Law of Japan: Selected Supreme Court Decisions 1961-70 Univ. of Washington Press (1978) p. 147-8 (Katō v. Japan, 1964) VIII-40

Re Belgian Language in Education, (1968) 1 EHRR, p. 252 . . . . . VIII-42

Numerus Clausus Case, 1 in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press p. 295, 33 BVerfGe 303 (1972) VIII-56

B. RIGHT TO PURSUE A LIVELIHOOD

Lochner v. New York, 198 U.S. 45 . . . . . VIII-62

Lee Optical v. Williamson, 348 U.S. 483 . . . . . VIII-68

Black v. Law Society of Alberta, 58 D.L.R. (4th) 317 . . . . . VIII-70

R.M.D.C. v. The State of Maharastra, A.I.R. 1957 S.C. 628 . . . . . VIII-78

Sumiyoshi v. Governor of Hiroshima, in Murphy, Walter F., and Tannenhaus, Joseph, Comparative Constitutional Law Cases and Commentaries, St. Martin's Press, (1977) pp. 285 . . . . . VIII-80

Traktörer Aktiebolag v. Sweden, (1991) 13 EHRR 309 . . . . . VIII-87

Pharmacy Case, in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press, 7 BVerfGE 377 . . . . . VIII-93

C. THE RIGHT TO PHYSICAL AND PSYCHOLOGICAL WELL-BEING

Shapiro v. Thompson, 394 U.S. 618 . . . . . VIII-97

Tetrault-Gadoury v. U.I.C., 81 D.L.R. (4th) 358 . . . . . VIII-108

Consumer Education and Research Centre v. Union of India A.I.R. 1995 S.C. 992 . . . VIII-113

Unni Krishnan v. State of A.P. A.I.R. 993 S.C. 2178 . . . . . VIII-116

The Horiki Welfare Support Case (1982), Beer and Itoh, The Constitutional Case Law of Japan 1970-1990, University of Washington Press 1996 . . . . . VIII-128

Airey v. U.K., 8 E.C.H.R. 42 (1977) VIII-130

Aircraft Noise Control Case, in The Constitutional Jurisprudence of the Federal Republic of Germany, Kommers, Donald P., (1989) Duke Univ. Press p. 317; 56 BVerfGE 54 (1981) VIII-137

APPENDIX

The Constitution of the United States of America App-1

The Constitution of Canada App-3

The Constitution of India App-10

The Constitution of Japan App-18

The European Convention of Human Rights and Fundamental Freedoms . . . App-22

The Basic Law of the Federal Republic of Germany App-28